

Fernando Gomez-Rosario,
Reg: # 18938-069,
McRae Correctional Facility,
100A Jim Hammock Drive,
McRae, Georgia 31055.

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United States District Court
Judicial District of Puerto Rico

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U.S. DISTRICT COURT
SAN JUAN, P.R.

Fernando Gomez-Rosario
Petitioner.

-VS-

Civil case no. _____
[To be assigned by the Clerk]
Related case no. Crim. 00-108 (FZS)

United State of America
Respondent

=====

To the Honorable Judge George Z. Single:

Motion to Vacate, set aside and/or to correct
petitioner's judgement of conviction and Sentence
pursuant to the provision of T. 28 U.S.C. § 2255

Comes now the petitioner, Fernando Gomez-Rosario, ("Gomez and/or petitioner") by and through this motion and very Respectfully. Move this honorable court, to Vacate, set at Side and/or to correct the judgement of conviction and Sentence based upon the followings grounds.

Certified mail no. 7005-1820-0006-0080-9734

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Ground 1:

Appeal's Attorney Mr. Andrew Nathanson, ("Mr. Nathanson"), was ineffective when he intentionally failed to claim that "trial Attorney Linda George ("Mrs. George"), was ineffective when she willfully and intentionally failed to claim that superseding indictment which alleged conspiracy ^{to} ^{perjure in} violate T.21 USCA § 841 was barred by Gomez's previous acquittal of aiding and abetting charge alleging ^{possession} ⁱⁿ violation of T.21 USC § 841 based on the same set of fact and same evidence. Pursuant to the doctrine of Collateral Estoppel. (See Seafon v. U.S., 68 S.Ct. 237, 332 U.S. 575 (U.S. N.J. 1948). "Supporting memorandum of law will be filed within 35 days"

Ground 2:

Appeal's Attorney was ineffective by his failure to claim that speedy trial act were violated in Gomez's ^{case} starting from Gomez's arrest, and the filing of the indictment for the alleged aiding and

abetting through the filing of the superseding indictment on March 12, 2003, and ending up when Gomez was convicted on June 26, 2003. "Supporting memorandum of law will be filed for this particular issue within 35 days."

- Ground 3:

Appeal's Attorney was ineffective when he failed to claim that ~~on~~ District court erred when admitted into evidence at Gomez's trial the gun allegedly recovered from the minivan within which Gomez arrived to the Hotel Iberia. "Supporting memorandum of law will be filed for this particular issue within 35 days".

Ground 4:

Appeal's Attorney Mr. Nathanson was ineffective by his failure to obtain an accurate translation of the conversation at the Hotel Iberia, "Between Gomez and agent Luis A. Carranza. Likewise Appeal's Attorney was ineffective by his failure to claim that trial attorney

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Intentionally failed to obtain and submit into evidence an accurate translation of the conversation between Gomez and the Government's Agent Luis A. Carronera At the Hotel Iberia. See Exhibit —
 "it will supplement
 "It will be supplemented to this motion with 3 days"

Appeal's Attorney, was ineffective by his failure to claim that there was a personal and actual conflict of interest between Gomez and trial attorney Mrs. George. which caused that ^{Gomez} be deprived of his constitutional Right as stated above and below

Ground :

Mrs. George was ineffective by her intentional failure to call as witness Mr. Gomez only material witness for his alibi defense, to wit, Doctor Gaguon. who had attended Mr. Hermann Franco Restrepo, ("Mr. Franco") on a person Gomez had taken to Emergency room of the Metropolitan Hospital, with a severe abdominal pain caused by a chronic constipation, for which

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for which the Doctor had prescribe him muscle Relaxer; milk of magnesia; ~~and~~ mineral oil and others. See Exhibit "a memorandum of law along with the pertinent Exhibit will be ~~of~~ filed within this court with the 35 days.

Ground :

Mrs. George was ineffective by her intentional failure to submit into evidence Mr. Franco medical Record which would ~~be~~ have corroborated Gomez's testimony while at the same time would have ~~be~~ Rebutted the Government's allegation that Gomez ~~was~~ accepted to obtain a laxative for Mr. Carmona & for other Reason "than good will. See Exhibit will be supplemented to this motion within 35 days

Ground:

Mrs. George was ineffective by her intentional failure to obtain from the Government, Gomez's purchase Receipt from of the prescription given by the doctor at the Mr. Restrepo, which include, milk

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of magnesia, mineral oil and others (See Exhibit _____) "The Receipt would be supplemented to this motion as ~~see~~ the Government turn them ~~off~~ ~~over to the~~ ~~to the~~ to the petitioner

Ground

Appeal Attorney was ineffective by his failure to claim that suppressing indictment was constitutional. Insufficient fails to state where did Gomez allegedly conspired with as well it violated the 5th, 5th and 6th Amendment of U.S. Constitution and Grand Jury protection clause. See Exhibit _____ it is this particular issue would be supplemented with ~~& his~~ and the memorandum of law with in 35 days

Ground :

The petitioner in this case is ~~not~~ actually Innocent and if his sentence and conviction is not over turned it will result in a miscarriage of justice. See Exhibit _____

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Petitioner will supplement the Exhibit and a memorandum of law for the issue stated above with the next 35 Days.

Wherefore it is respectfully Requested that this Honorable court grant to petitioner all the Remedy and Relief sought herein ~~of~~ in addition to any other that this Honorable court may deem ~~as~~ needed.

In McRae Georgia on the 10th Day of August
2006

Hereby I Fernando Garnez-Pasario, Declare under penalty of Perjury that on this 10th Day of August 2006 this done pursuant to the provision of T. 28 USC § ~~2346~~ ²³⁴⁶

By ~~Fernando Garnez~~
Fernando Garnez-Pasario
Reg # 18938-009
McRae Correctional Facility
1000 P Jim Hammack Drive
McRae Georgia 30055
31055